

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 488**

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**Introduced by Assembly Member Williams**

February 19, 2013

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An act to add Article 3 (commencing with Section 42450.1) to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL’S DIGEST

AB 488, as amended, Williams. Recycling: household batteries.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires retailers of rechargeable batteries to have in place a system for the acceptance and collection of rechargeable batteries.

~~The bill would require a producer of single-use primary household batteries or a single-use primary household battery stewardship organization created by one or more producers to submit a single-use primary household battery stewardship plan to the department.~~

*This bill would require, by January 1, 2015, a producer or a household battery stewardship organization created by one or more producers of a household battery to submit to the department a household battery stewardship plan, which would be required to include specified elements. The bill would require the department to review a household battery stewardship plan submitted to the department within 30 days after receipt and to approve or disapprove the plan, as specified.*

*The bill would prohibit a producer, wholesaler, or retailer, on and after April 1, 2015, from selling a household battery unless the plan for that battery is approved by the department. The bill would require*

*a producer or the household battery stewardship organization to implement the household battery program pursuant to the household battery stewardship plan, including achieving a specified collection rate. The bill would require each producer or household battery stewardship organization implementing a household battery stewardship plan to prepare and submit to the department an annual report describing the activities carried out pursuant to the household battery stewardship plan.*

*The bill would require a producer or household battery stewardship organization submitting a household battery stewardship plan to pay the department a plan review fee, as determined by the department, when submitting the plan to the department and to pay an administrative fee, as determined by the department, when submitting the annual report. The bill would provide for the imposition of administrative civil penalties upon a wholesaler or retailer selling household batteries in violation of the bill. The bill would create the Household Battery Stewardship Account in the existing Integrated Waste Management Fund and would require that the fees be deposited into that account and that the penalties be deposited into the Household Battery Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the department's program implementation costs and would authorize all funds collected or received by the department under the program, except for the fees, to be expended as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of batteries.*

*The bill would also allow a producer or organization that is implementing an approved plan and incurring specified costs to bring a civil action to recover costs, damages, and fees from another producer for failure to comply with the bill's provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In early 2006, ~~all~~ most household batteries were classified
- 4 by the state as universal waste and prohibited from being disposed
- 5 of in solid waste landfills. *Under state law, "household batteries"*

1 means batteries made of mercury, alkaline, carbon-zinc, and  
2 nickel-cadmium, and other batteries typically generated as  
3 household waste, including, but not limited to, batteries used in  
4 hearing aids, cameras, watches, computers, calculators, flashlights,  
5 lanterns, standby and emergency lighting, portable radios,  
6 television sets, meters, toys, and clocks, but excluding lead-acid  
7 batteries, batteries that are sold in a “covered electronic device,”  
8 as defined in Section 42463 of the Public Resources Code, and  
9 batteries that are not easily removable or are not intended or  
10 designed to be removed from the products, other than by the  
11 manufacturer.

12 (b) Effective July 1, 2006, state law prohibits most retailers  
13 from selling rechargeable batteries in the state unless they have a  
14 system in place for collecting used rechargeable batteries from  
15 consumers.

16 ~~(c) Rechargeable battery producers are subject to a mandatory~~  
17 ~~take-back system pursuant to Section 42453 of the Public~~  
18 ~~Resources Code, and the Department of Resources Recycling and~~  
19 ~~Recovery is required to annually report on the estimated amount~~  
20 ~~of rechargeable batteries recycled in the state the previous calendar~~  
21 ~~year.~~

22 ~~(d)~~  
23 (c) Approximately 80 percent of batteries sold in this state are  
24 alkaline batteries and are not covered under the retail take-back  
25 requirements specified in subdivision (e).

26 ~~(e)~~  
27 (d) Local governments throughout the state are responsible for  
28 the collection and management of household batteries, and to  
29 manage this hazardous waste, these local governments and  
30 taxpayers pay a range of between eight hundred dollars (\$800) per  
31 ton to two thousand seven hundred dollars (\$2,700) per ton, or  
32 tens of millions of dollars each year.

33 ~~(f)~~  
34 (e) Because other types of recycling programs have proven to  
35 have limited success, state and regional governments in Europe  
36 and Canada have adopted producer responsibility programs to  
37 redirect the responsibility for the end-of-life management of  
38 discarded hazardous and hard-to-manage products from local  
39 governments and retailers primarily to producers.

40 ~~(g)~~

(f) After many public hearings and discussions, the former California Integrated Waste Management Board adopted an overall Framework for an Extended Producer Responsibility (EPR) guidance document as a policy priority in January 2008.

(h)

(g) The program established by Article 3 (commencing with Section 42450.1) of Chapter 8 of Part 3 of Division 30 of the Public Resources Code, by Section 2 of this act, is intended to reduce costs to local government, to harmonize the state's producer responsibility obligations with other national and international programs, and to enhance the protection of public health and environment through ~~safer product design, the use, reuse, and end-of-life management of those household batteries.~~

(h) *The plan review fee and the administrative fee imposed pursuant to Section 42450.10 of the Public Resources Code are regulatory fees within the meaning of paragraph (3) of subdivision (b) of Section 3 of Article XIII A of the California Constitution, as the fees are imposed solely for the purpose of recovering the reasonable regulatory costs to the Department of Resources Recycling and Recovery incident to investigating, inspecting, and auditing the fee payer, and the enforcement costs thereof, and with respect to reviewing the household battery stewardship plan, and the annual reports and enforcing Article 3 (commencing with Section 42450.1) of Chapter 8 of Part 3 of Division 30 of the Public Resources Code.*

SEC. 2. Article 3 (commencing with Section 42450.1) is added to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, to read:

Article 3. Product Stewardship for ~~Single-Use~~ Household Batteries

~~42450.1. For purposes of this article, and unless the context otherwise requires, the definitions in this section govern the construction of this article.~~

(a) ~~“Single-use primary household battery” means a household battery, as defined in subdivision (c) of Section 42450, that is a primary battery.~~

(b) ~~“Primary battery” means an electric cell that generates an electromotive force by the direct and usually irreversible~~

1 ~~conversion of chemical energy into electrical energy and that~~  
2 ~~cannot be recharged efficiently by an electric current.~~

3 (e) ~~“Single-use primary household battery stewardship~~  
4 ~~organization” means a nonprofit organization created by the one~~  
5 ~~or more producers to implement the single-use primary household~~  
6 ~~battery stewardship program.~~

7 ~~42450.2. On or before January 1, 2015, a producer of single-use~~  
8 ~~primary household batteries or a single-use primary household~~  
9 ~~battery stewardship organization shall submit a household battery~~  
10 ~~stewardship plan to the department.~~

11 *42450.1. For purposes of this article, and unless the context*  
12 *otherwise requires, the definitions in this article govern the*  
13 *construction of this article.*

14 (a) *“Baseline of the number of household batteries collected*  
15 *by all producers subject to the plan” means a number calculated*  
16 *by weight based on the percentage of household batteries that are*  
17 *collected during a calendar year, as compared to the average*  
18 *number of household batteries that were annually sold in the state*  
19 *by those producers during the previous three calendar years.*

20 (b) *“Brand” means a name, symbol, word, or traceable mark*  
21 *that identifies a household battery, rather than its components,*  
22 *and attributes the household battery to the owner or licensee of*  
23 *the brand as the producer.*

24 (c) *“Collection rate” means a quantitative measure that each*  
25 *program is required to collect by an established date. The*  
26 *collection rate shall be calculated by weight and shall distinguish*  
27 *between nonrechargeable household batteries and rechargeable*  
28 *household batteries, but not by the individual producer of each*  
29 *battery.*

30 (d) *“Discarded household battery” means a household battery*  
31 *that has been discarded, as defined in subdivision (b) of Section*  
32 *25124 of the Health and Safety Code.*

33 (e) *“Distributor” means an entity that sells, offers for sale, or*  
34 *makes available for sale in the state one or more unused household*  
35 *batteries or one or more unused products incorporating or*  
36 *packaged with a household battery and is not the brand owner of*  
37 *the unused household batteries or unused products incorporating*  
38 *or packaged with one or more household batteries.*

1 (f) (1) “Household battery” has the same meaning as defined  
2 in subdivision (c) of Section 42450, but shall not include any of  
3 the following:

4 (A) A battery that is sold in a covered electronic device, as  
5 defined in Section 42463.

6 (B) A battery that is not easily removable or is not intended or  
7 designed to be removed from the product, other than by the  
8 manufacturer.

9 (2) “Household battery” includes both rechargeable and  
10 nonrechargeable household batteries.

11 (g) “Household battery stewardship organization” or  
12 “organization” means an organization appointed by one or more  
13 producers pursuant to paragraph (1) of subdivision (b) of Section  
14 42450.2 to act as an agent on behalf of the producer to design,  
15 submit, and administer a household battery stewardship plan  
16 pursuant to this article.

17 (h) “Household battery stewardship plan” or “plan” means a  
18 plan submitted to the department pursuant to Section 42450.2 by  
19 an individual producer or a household battery stewardship  
20 organization.

21 (i) “Recycling” means the process of collecting and preparing  
22 recyclable materials and reusing the materials in their original  
23 form or using them in manufacturing processes that do not cause  
24 the destruction of recyclable materials in a manner that precludes  
25 further use.

26 (j) “Nonrechargeable battery” means a battery weighing 2  
27 kilograms or less that is not designed to be electrically recharged.  
28 A nonrechargeable battery includes, but is not limited to, alkaline  
29 manganese, carbon zinc, lithium, silver oxide, and zinc air  
30 batteries.

31 (k) “Producer” shall be determined, with regard to a household  
32 battery that is sold, offered for sale, or distributed in the state, as  
33 meaning one of the following:

34 (1) The person who manufactures the household battery and  
35 who sells, offers for sale, or is the distributor of, that household  
36 battery in the state under that person’s own name or brand.

37 (2) If there is no person who sells, offers for sale, or is the  
38 distributor of, the household battery in the state under the person’s  
39 own name or brand, the producer of the household battery is the  
40 owner or licensee of a trademark or brand under which the

1 household battery is sold or distributed in the state, whether or  
2 not the trademark is registered.

3 (3) If there is no person who is a producer of the household  
4 battery for purposes of paragraphs (1) and (2), the producer of  
5 that household battery is the person who imports the household  
6 battery into the state for sale or distribution.

7 (l) "Product stewardship" means requiring the producer of a  
8 household battery, and all other entities involved in the distribution  
9 chain of a household battery, to share in the collection and  
10 recycling of the household battery.

11 (m) "Program" means the system for the collection,  
12 transportation, recycling, and disposal of household batteries  
13 implemented pursuant to an approved household battery  
14 stewardship plan.

15 (n) "Reporting period" means the period commencing January  
16 1 and ending on December 31 of the same calendar year.

17 (o) "Retailer" means a person that offers new household  
18 batteries in a retail sale, as defined in Section 6007 of the Revenue  
19 and Taxation Code, including a retail sale at retail through any  
20 means, including remote offerings such as sales outlets, catalogs,  
21 or an Internet Web site.

22 (p) "Sell" or "sales" means any transfer of title of a household  
23 battery for consideration, including a remote sale conducted  
24 through a sale outlet, catalog, or Internet Web site or similar  
25 electronic means, but does not include a lease.

26 (q) "Wholesaler" means a person that offers new household  
27 batteries for sale in this state in a sale that is not a retail sale, as  
28 defined in Section 6007 of the Revenue and Taxation Code, and  
29 for which the household battery is intended to be resold.

30 42450.2. (a) On or before January 1, 2015, each producer or  
31 the household battery stewardship organization for one or more  
32 producers of household batteries shall submit a household battery  
33 stewardship plan to the department.

34 (b) (1) If one or more producers appoint a household battery  
35 stewardship organization to act as an agent on behalf of one or  
36 more of those producers, the organization may include producers,  
37 and shall also include, at minimum, one voting member from each  
38 of the following organizations, with priority given to those based  
39 in California:

40 (A) Retailers.

1     (B) *Local governments.*

2     (C) *Public representatives.*

3     (D) *Haulers.*

4     (E) *Recyclers.*

5     (2) *If the household battery stewardship organization is unable*  
6 *to recruit members from the organizations identified in paragraph*  
7 *(1), the stewardship organization shall provide an explanation to*  
8 *the department in the plan submitted pursuant to this section or*  
9 *the annual report required by Section 42450.9.*

10    (c) (1) *Except as provided in paragraph (2), before submitting*  
11 *the household battery stewardship plan to the department, the*  
12 *producer, group of producers, or household battery stewardship*  
13 *organization shall consult with stakeholders, including retailers,*  
14 *collectors, recyclers, local government, and customers, during the*  
15 *development of the household battery stewardship plan, and shall*  
16 *solicit stakeholder comments and respond to stakeholder comments.*

17    (2) *If stakeholder involvement is not feasible, the producer,*  
18 *group of producers, or household battery stewardship organization*  
19 *shall provide an explanation to the department in the plan*  
20 *submitted pursuant to this section or the annual report required*  
21 *by Section 42450.9.*

22    (d) *Each household battery stewardship plan shall include, at*  
23 *a minimum, all of the following elements:*

24    (1) *Contact information for all participating producers.*

25    (2) *The collection rate for the household batteries subject to*  
26 *the plan in the following manner, except as provided in Section*  
27 *42450.3:*

28    (A) *A baseline of the number of household batteries collected*  
29 *by all producers subject to the plan, which shall be calculated by*  
30 *weight based on the percentage of household batteries collected*  
31 *during the previous calendar year, as compared to the average*  
32 *number of household batteries that were sold in the state during*  
33 *the previous three calendar years by all producers that are subject*  
34 *to the plan.*

35    (B) *If a producer subject to the plan previously collected data*  
36 *to establish a baseline number of household batteries, that baseline*  
37 *number may be used to fulfill the requirement in subparagraph*  
38 *(A), if the data is no more than three years old and the producer*  
39 *submits the data collected and methodology used to calculate that*  
40 *number to the department in the plan.*



1     (C) *The program shall achieve an increase in the household*  
2 *battery collection rate of 25 percent, starting at the baseline rate*  
3 *calculated pursuant to subparagraph (A) or (B), for the 2019*  
4 *calendar year.*

5     (3) *A description of the brands of the household batteries*  
6 *covered by the plan and the baseline of household batteries*  
7 *collected during the previous calendar year, as determined*  
8 *pursuant to subparagraph (A) of paragraph (2).*

9     (4) *The number and type of convenient collection opportunities*  
10 *provided free of charge for consumers in all counties of the state,*  
11 *the methods by which the discarded household batteries will be*  
12 *collected in all areas in the state, and an explanation of how the*  
13 *collection system will be convenient and adequate to serve the*  
14 *ongoing needs of small businesses and consumers in both urban*  
15 *and rural areas.*

16     (5) *A description of the method that will be used to recycle the*  
17 *discarded household batteries to ensure that the components of*  
18 *the discarded household batteries, to the extent feasible, are*  
19 *transformed or remanufactured into finished batteries for use.*

20     (6) *Roles and responsibilities of key participants in the*  
21 *household battery distribution chain.*

22     (7) *The outreach procedures that will be used to provide notice*  
23 *of the program to employers, local agencies, retailers, wholesalers,*  
24 *and waste haulers.*

25     (8) *The manner in which existing household battery collection*  
26 *points and other programs can be identified and maximized to*  
27 *achieve the required collection rates.*

28     (9) *The methods of disposing the household batteries collected*  
29 *pursuant to the plan.*

30     (10) (A) *The financing method selected to sustainably fund the*  
31 *implementation of the plan for achieving the identified collection*  
32 *rates described in the plan.*

33     (B) *The financing method shall not include a separate and*  
34 *distinct fee at the point of purchase.*

35     (11) *The planned educational activities to maximize collection*  
36 *rates, including, but not limited to, the use of social media,*  
37 *billboards, print, and radio, and information provided at the point*  
38 *of sale.*

39     (e) *The producer or household battery stewardship organization*  
40 *may elect to include provisions in the plan for the implementation*

1 of the program in conjunction with those cities, counties, districts,  
2 and regional agencies, in whose jurisdictions the program will be  
3 implemented. If the producer or household battery stewardship  
4 organization makes this election, the producer or household battery  
5 stewardship organization shall provide one or more of the  
6 following to cities, counties, districts, and regional agencies  
7 participating in the stewardship program:

8 (1) Reasonable reimbursement for the mutually agreed upon  
9 cost per pound of collected household batteries.

10 (2) The location, hours, and contact information for the  
11 convenient collection points for discarded household batteries that  
12 are located within the county where the local agency is located  
13 and that are consistent with the plan.

14 (3) Products for setting up a collection point within that local  
15 agency and providing for the pickup of household batteries  
16 collected, including, but not limited to, arranging for the disposal  
17 of those household batteries.

18 42450.3. A producer or household battery stewardship  
19 organization may petition the department for an adjustment to the  
20 collection rate specified in the plan. The department may grant  
21 an adjustment to the collection rate only if the department  
22 determines there are documented exigent circumstances that are  
23 beyond the control of the producer or household battery  
24 stewardship organization.

25 42450.4. (a) On or before 30 days after the date a plan is  
26 received pursuant to Section 42450.2, the department shall review  
27 the plan to determine whether each plan element has been  
28 addressed in the plan and the plan adequately addresses  
29 stakeholder comments and oversight concerns. If the department  
30 does not approve the plan, the department shall notify the producer  
31 or organization that submitted the plan which elements were not  
32 adequately addressed, and the producer or organization shall  
33 revise and resubmit the plan within 45 days after receiving the  
34 notification. If the department approves the plan, the department  
35 shall, within 45 days after receipt, notify the producer or  
36 organization that the submitted plan is approved.

37 (b) The department shall make all household battery stewardship  
38 plans submitted to the department pursuant to Section 42450.2  
39 available to the public on the department's Internet Web site.

1     (c) A producer or organization shall notify the department 30  
2     days before instituting a significant or material change to an  
3     approved household battery stewardship plan.

4     (d) On or before September 1, 2015, and on or before September  
5     1 annually thereafter, the department shall post on its Internet  
6     Web site a listing of the brands of household batteries for which  
7     the producer is in compliance with this article and for which the  
8     household battery stewardship plan is in compliance with this  
9     article, as specified in Section 42450.7.

10    42450.5. On and after, April 1, 2015, a producer, wholesaler,  
11    or retailer shall not offer a household battery for sale in this state  
12    or offer a household battery for promotional purposes in this state  
13    unless the plan submitted by the producer or household battery  
14    stewardship organization of that household battery has been  
15    approved by the department pursuant to Section 42450.4.

16    42450.6. Upon receiving notification from the department  
17    pursuant to Section 42450.4 that a plan is approved, the producer  
18    or the household battery stewardship organization shall do all of  
19    the following:

20    (a) Implement the plan, including, but not limited to, achieving  
21    the collection rate specified in the plan.

22    (b) Pay the administrative fees imposed pursuant to subdivision  
23    (b) of Section 42450.10.

24    (c) Submit the annual report required by Section 42450.9.

25    (d) (1) If a producer or household battery stewardship  
26    organization elects to implement the plan in conjunction with cities,  
27    counties, districts, and regional agencies pursuant to subdivision  
28    (e) of Section 42450.2, the producer or organization shall take the  
29    actions specified in subdivision (e) of Section 42450.2.

30    (2) A local agency that elects to participate in the program shall  
31    separate from any other materials the household batteries made  
32    available for collection by the producer or household battery  
33    stewardship organization.

34    42450.7. A household battery stewardship program shall be  
35    considered in compliance with this article if it achieves the  
36    collection rate for household batteries covered by the plan, as  
37    required by paragraph (2) of subdivision (d) of Section 42450.2.

38    42450.8. (a) A wholesaler or a retailer that distributes or sells  
39    household batteries shall monitor the department's Internet Web

1 *site to determine if the sale of a producer's household batteries is*  
2 *not prohibited by Section 42450.5.*

3 *(b) A retailer shall have 90 days from the date a noncompliant*  
4 *brand is posted on the department's Internet Web site to sell the*  
5 *remaining stock of those noncompliant household batteries or to*  
6 *remove the product from sale. An enforcement action shall not be*  
7 *taken against a retailer pursuant to this article with regard to that*  
8 *noncompliant brand until after that 90-day period has expired.*

9 *42450.9. (a) On or before April 1, 2015, and every subsequent*  
10 *year thereafter, each producer or household battery stewardship*  
11 *organization implementing a plan shall prepare and submit to the*  
12 *department an annual report describing the activities carried out*  
13 *pursuant to the plan during the previous calendar year. The annual*  
14 *report shall include, but is not limited to, all of the following*  
15 *elements:*

16 *(1) The weight of household batteries collected by the program*  
17 *in the prior year and the collection rate achieved in the prior year.*

18 *(2) A report of the estimated total sales data by weight for*  
19 *household batteries sold in the state for the previous three calendar*  
20 *years.*

21 *(3) A report on the feedback from a stakeholders' meeting,*  
22 *hosted by producers, that was made available through*  
23 *telecommunication, prior to submittal of the annual report.*

24 *(4) Independently audited financial statements that detail the*  
25 *financing of the plan.*

26 *(5) Locations, hours, and contact information for all collection*  
27 *points set up by the producers covered by the plan.*

28 *(6) Examples and description of educational materials used to*  
29 *increase collection.*

30 *(7) The manner in which the collected household batteries were*  
31 *disposed of and recycled.*

32 *(b) The department shall review an annual report by doing all*  
33 *of the following:*

34 *(1) For the 2019 calendar year, if the report is submitted for*  
35 *that year, and or for each year thereafter, the department shall*  
36 *certify that the collection points listed in the annual report are*  
37 *located in every county and serve the ongoing needs of small*  
38 *businesses and consumers in both urban and rural areas, as*  
39 *specified in paragraph (4) of subdivision (d) of Section 42450.2.*

1     (2) Review sales and collection data provided for the state to  
2     verify collection rates.

3     (3) Verify that all annual report elements specified in subdivision  
4     (a) have been addressed in the report.

5     (c) If the department does not act on a report within 45 days of  
6     receipt, the report shall be deemed to be approved.

7     (d) The department shall make all reports submitted to the  
8     department pursuant to this section available to the public on the  
9     department's Internet Web site.

10    (e) If the collection rate for the household batteries subject to  
11    the plan meets the collection rate specified in subparagraph (C)  
12    of paragraph (2) of subdivision (d) of Section 42450.2, the report  
13    shall be submitted once every two years.

14    42450.10. (a) (1) A producer or household battery stewardship  
15    organization that submits a household battery stewardship plan  
16    to the department shall pay a plan review fee to the department  
17    pursuant to this subdivision.

18    (2) The department shall set the plan review fee at an amount  
19    so that the total amount of plan review fees received by the  
20    department is no more than necessary to cover the reasonable  
21    costs of reviewing and enforcing the plan. The department may  
22    establish a variable plan review fee based on relevant factors,  
23    including, but not limited to, the proportion of household batteries  
24    produced by the feepayer as compared to the total amount of  
25    batteries produced by all producers or household battery  
26    stewardship organizations submitting a household battery  
27    stewardship plan. The department shall establish the fee so that  
28    the manner in which the fee is allocated bears a fair and  
29    reasonable relationship to the department's costs in reviewing a  
30    plan.

31    (3) The fee shall be due to the department upon submittal of the  
32    plan.

33    (b) (1) A producer or household battery stewardship  
34    organization required to submit an annual report pursuant to this  
35    article shall pay an annual administrative fee to the department  
36    pursuant to this subdivision.

37    (2) The department shall set the annual administrative fee in  
38    an amount that is no more than necessary to cover the reasonable  
39    costs of reviewing annual reports and enforcing this article. The  
40    department may establish a variable annual administrative fee

1 based on relevant factors, including, but not limited to, the  
2 proportion of household batteries produced by the feepayer, as  
3 compared to the total amount of household batteries produced by  
4 all producers or household battery stewardship organizations  
5 submitting an annual report, and whether the producer is  
6 submitting a plan every two years as specified in subdivision (e)  
7 of Section 42450.9. The department shall establish the fee so that  
8 the manner in which the fee is allocated bears a fair and  
9 reasonable relationship to the department's costs in reviewing the  
10 annual reports and enforcing this article.

11 (3) The fee shall be due to the department upon submittal of the  
12 annual report.

13 (c) The total amount of fees collected pursuant to this section  
14 shall not exceed the amount necessary to recover costs incurred  
15 by the department in connection with the administration and  
16 enforcement of the requirements of this article.

17 42450.11. (a) The Household Battery Stewardship Account  
18 and the Household Battery Stewardship Penalty Subaccount are  
19 hereby established in the Integrated Waste Management Fund.

20 (b) All fees collected pursuant to this article shall be deposited  
21 in the Household Battery Stewardship Account and may be  
22 expended by the department, upon appropriation by the  
23 Legislature, to cover the department's costs to implement this  
24 article.

25 (c) All penalties collected pursuant to this article shall be  
26 deposited in the Household Battery Stewardship Penalty  
27 Subaccount and may be expended by the department, upon  
28 appropriation by the Legislature, to cover the department's costs  
29 to implement this article.

30 (d) All funds that are collected or received by the department  
31 pursuant to this article, other than the fees specified in subdivision  
32 (b), may be expended as incentives to enhance reuse, recyclability,  
33 and redesign efforts and to reduce environmental and safety  
34 impacts of household batteries.

35 42450.13. (a) The department may impose an administrative  
36 civil penalty not to exceed one thousand dollars (\$1,000) per day  
37 against a wholesaler or retailer that violates Section 42450.5.

38 (b) A wholesaler or retailer that removes from sale any  
39 household battery within 90 days of discovery that it is not in

1 *compliance with this article shall not be deemed to be in violation*  
2 *of Section 42450.5.*

3 *(c) Prior to enforcing any penalty pursuant to this section, the*  
4 *department shall issue a compliance order to the wholesaler or*  
5 *retailer selling the household battery that allows 30 days from the*  
6 *date of the compliance order to cease sales of the household*  
7 *battery.*

8 *42450.14. (a) A producer or organization that implements a*  
9 *plan in compliance with this article and incurs costs in excess of*  
10 *five thousand dollars (\$5,000) in collecting, handling, recycling,*  
11 *or properly disposing of household batteries sold or offered for*  
12 *sale in the state, may bring a civil action to recover costs, damages,*  
13 *and fees, as specified in subdivision (c), from another producer*  
14 *for failure to comply with this article, if that producer can be*  
15 *identified from a brand or marking on a discarded household*  
16 *battery or from other information.*

17 *(b) An action under this section may be brought against one or*  
18 *more producers who are not in compliance with this article, except*  
19 *an action shall not be commenced under either of the following*  
20 *circumstances:*

21 *(1) No earlier than 60 days after a written notice of the*  
22 *organization's or producer's intention to file an action has been*  
23 *provided to the department and to the producer who is alleged to*  
24 *be noncompliant.*

25 *(2) If the department has commenced an enforcement action*  
26 *against the producer who is alleged to be noncompliant and is*  
27 *diligently pursuing that action.*

28 *(c) In an action under this section, the plaintiff may recover*  
29 *from a producer who has been found to be noncompliant all of the*  
30 *following:*

31 *(1) The costs the plaintiff incurred in collecting, handling,*  
32 *recycling, or properly disposing of household batteries reasonably*  
33 *identified as having originated from the noncompliant producer.*

34 *(2) An amount of damages equal to no more than three times*  
35 *those costs specified in paragraph (1).*

36 *(3) The plaintiff's attorney's fees and costs of bringing the*  
37 *action.*

38 *(d) An action to recover the costs specified in this section may*  
39 *be brought in any court in the state, without regard to the amount*  
40 *in dispute.*

1     (e) An action to recover the costs specified in this section may  
2     be brought in any court in the state, without regard to the amount  
3     in dispute.

4     42450.16. This article does not limit, supersede, duplicate, or  
5     otherwise conflict with the authority of the Department of Toxic  
6     Substances Control under Section 25257.1 of the Health and Safety  
7     Code to fully implement Article 14 (commencing with Section  
8     25251) of Chapter 6.5 of Division 20 of the Health and Safety  
9     Code, including the authority of the department to include  
10    household batteries in its household battery registry.

11    42450.17. (a) Except as provided in subdivision (b), an action  
12    taken to increase the recycling of household batteries pursuant to  
13    this article by a producer or household battery stewardship  
14    organization that affects the types or quantities being recycled or  
15    the cost and structure of any return program is not a violation of  
16    either the Cartwright Act (Chapter 2 (commencing with Section  
17    16700) of Part 2 of Division 7 of the Business and Professions  
18    Code), or the Unfair Practices Act (Chapter 4 (commencing with  
19    Section 17000), of Part 2 of Division 7 of the Business and  
20    Professions Code).

21    (b) Subdivision (a) shall not apply to any agreement establishing  
22    or affecting the price of household batteries or the output or  
23    production of household batteries, or any agreement restricting  
24    the geographic area in which, or customers to whom, household  
25    batteries will be sold.